

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LAURA JACQUELINE LISTON,

Plaintiff,

-vs-

MICHAEL CHERTOFF, SECRETARY OF THE
U.S. DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

NO. CV-06-0265-LRS

ORDER GRANTING UNITED
STATES' MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Before the court are the cross-motions of the United States and Plaintiff (Ct. Recs. 28, 24 respectively), filed on February 12, 2008, and noted without oral argument. This Court previously denied the Defendant's motion to dismiss pursuant to CR 12. Ct. Rec. 19. In their briefing the parties have agreed that there are no additional factual matters to be developed herein.

I. FACTUAL BACKGROUND

Plaintiff Laura J. Liston filed a Complaint for Declaratory Judgment seeking a determination that she is entitled to a Certificate of Citizenship pursuant to the Child Citizenship Act found at §322 of the Immigration and Nationality Act, 8 U.S.C. §1433. Plaintiff, born on August 13, 1986, is a citizen and national of Mexico. On March 29, 2004

1 Plaintiff's father, Raymond Gilbert Liston, a U.S. citizen, applied for
2 a Certificate of Citizenship on behalf of Plaintiff by submitting an N-
3 600 application to the United States Citizenship and Immigration
4 Services' ("USCIS") Spokane, Washington office. Plaintiff claimed a
5 right to citizenship through her citizen father and grandfather.
6 Complaint, ¶4. At that time, Plaintiff's eighteenth birthday was four and
7 a half months away, on August 13, 2004. Complaint, ¶6. The N-600
8 application process requires that applicants personally appear and swear
9 an oath of allegiance prior to issuance of a certificate of citizenship.
10 8 U.S.C. §1433(a)(3); 8 C.F.R. §322.4. Because Plaintiff was so close
11 to her eighteenth birthday, USCIS scheduled her mandatory personal
12 interview for July 29, 2004. Complaint, §9; Attachment B, ¶3.

13 Thereafter, USCIS mailed a notice of the interview date and time to
14 Plaintiff's home in Mexico. Attachment B, ¶¶4-5. No other address was
15 provided in the paperwork which was submitted in support of Plaintiff's
16 application. While Plaintiff claims to have not received this notice,
17 it was not returned to USCIS and was thus presumed to be delivered.
18 Complaint ¶¶7, 13, Attachment B, ¶5. Plaintiff attempted to determine
19 the status of her application via telephone calls to the USCIS National
20 Service Center but was unsuccessful because she did not know her file
21 number. Complaint ¶10. Plaintiff indicates that she did not telephone
22 the Spokane office of USCIS directly because its phone number was not
23 provided on its website. Complaint ¶11. Plaintiff did not attempt to
24 obtain the telephone number through other means, did not send written
25 communication to USCIS, nor did she physically go to USCIS to check on
26 her case status prior to her birthday, although it is undisputed she

1 could have stopped by, which would have solved the problem.¹ *Id.* As a
2 result, Plaintiff was unaware of and did not attend her interview
3 appointment on July 29, 2004 at the Spokane office of USCIS.

4 After the missed interview, USCIS attempted to telephone Plaintiff
5 at her home in Mexico in order to remind her of the imminent eligibility
6 deadline but was unable to reach her. (Complaint, ¶12; Attachment B, ¶5;
7 Ct. Rec. 10, Attachments A and B.) There were no alternative addresses
8 for which the agency could use to contact the Plaintiff. USCIS then sent
9 a letter to Plaintiff dated September 22, 2004, informing her that she
10 had missed her appointment, which Plaintiff did receive. Complaint, ¶7.

11 Plaintiff's application was denied on October 18, 2004 because
12 Plaintiff had reached her eighteenth birthday prior to the adjudication
13 of her application, did not attend or reschedule her required N-600
14 interview appointment, had not subscribed to the oath of allegiance as
15 required by 8 U.S.C. 1433(b) and was determined to be statutorily
16 ineligible. Complaint, ¶2; Attachment A, ¶8. Plaintiff is no longer
17 eligible to reapply under this statute, as she is no longer a child.
18 Complaint, ¶6.

19 20 II. SUMMARY JUDGMENT STANDARDS

21 To withstand a motion for summary judgment, the opposing party must
22 set forth specific facts to show that there is a genuine issue of
23 material fact in dispute. Fed.R.Civ.P. 56(e). A dispute about a material
24 fact is genuine "if the evidence is such that a reasonable jury could

25
26 ¹Plaintiff states she was in Spokane on July 29, 2004 when her
interview was scheduled, albeit without her knowledge.

1 return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). All facts
2 in the record and inferences drawn therefrom must be viewed in the light
3 most favorable to the nonmoving party. In the absence of genuine issues
4 of disputed fact, "the moving party is entitled to judgment as a matter
5 of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91
6 L.Ed.2d 265 (1986).
7

8 9 **III. THE PARTIES' ARGUMENTS**

10 **A. Defendant's Arguments**

11 Defendant argues that the court should grant summary judgment and
12 dismiss Plaintiff's complaint because the USCIS has not engaged in
13 affirmative misconduct and equity does not dictate estoppel. Defendant
14 concludes that neither the USCIS nor the Court has the legal authority
15 to ignore the statutory requirements for citizenship.

16 More particularly, the USCIS lacks the statutory authority to grant
17 this Plaintiff citizenship based on the relevant statute (Child
18 Citizenship Act or CCA) and regulations that require the child to be
19 under the age of 18 years. Defendant states that although the law may
20 be admittedly harsh on some applicants, Plaintiff's assertion that
21 USCIS's denial of her application was arbitrary and capricious is not
22 accurate. USCIS expedited and adjudicated Plaintiff's application
23 properly but had no choice but to deny Plaintiff's application.
24 Plaintiff's ineligibility was caused by the delayed submission and
25 purportedly a mail service problem. Defendant states that a missed
26 deadline cannot be undone in these circumstances.

1 **B. Plaintiff's Arguments**

2 Plaintiff's predominant theory in opposition to dismissal is that
3 this case presents genuine issues of material fact that must be resolved
4 at trial. Plaintiff's argument focuses mainly on the reasonableness of
5 the efforts she and her father made in attempting to discover the status
6 of her case after not receiving the notice mailed to them. Plaintiff
7 alleges that USCIS made it unreasonably difficult for her to inquire
8 about her case by not giving her a direct telephone number and by not
9 giving her a file number at the time of her application, which she needed
10 to access the Internet file tracking system to determine the status of
11 her application. Plaintiff states she went to the Spokane USCIS office
12 on October 12, 2004 to personally determine the status of her case, at
13 which time her interview could have been conducted without prejudice to
14 the government. Plaintiff argues for equitable estoppel to be applied
15 in her case based on the reasonableness of her actions.

16
17 **IV. ANALYSIS**

18 It is undisputed that Plaintiff's father sought a certificate of
19 citizenship pursuant to 8 U.S.C. § 1452(a). It is undisputed that
20 Plaintiff submitted a Form N-600 and the proper fee specified in 8
21 C.F.R. § 103.7(b)(1). It is undisputed that the application was also
22 supported by documentary and other evidence essential to establish the
23 claimed citizenship, as there is evidence Plaintiff's sister was issued
24 a citizenship certificate. Declaration of Sandra Johnston, ¶8.

25 On October 18, 2004 a letter was sent to Plaintiff denying her
26 application for a certificate of citizenship and explaining that efforts

1 were made to contact her but that she had missed her interview
2 appointment and now, being 18 years of age, did not meet the requirements
3 for issuance of a certificate.

4 Plaintiff cannot show that the government has engaged in affirmative
5 misconduct going beyond negligence, a requisite for application of the
6 doctrine of equitable estoppel. See *Pauly v. U.S. Dept. Of Agriculture*,
7 348 F.3d 1143, 1149 (9th Cir. 2003). In the instant case, there is
8 absolutely no evidence that the USCIS engaged in affirmative misconduct
9 or erred in failing to expedite Plaintiff's application. Application of
10 equitable estoppel is therefore not appropriate. See *Harriott v.*
11 *Ashcroft*, 277 F.Supp.2d 538 (E.D.Pa.2003); *Petition of Tubig in Behalf of*
12 *Tubig*, 559 F.Supp. 2 (N.D.Cal.1981). Although the result of dismissal is
13 harsh, the USCIS has lost the legal authority to approve Plaintiff's
14 application because she has reached the age of majority. There is no
15 evidence that Plaintiff was prohibited from filing her application much
16 earlier than 4 months prior to her eighteenth birthday.

17 Plaintiff has failed to allege sufficient facts to make a prima
18 facie case for equitable estoppel against the USCIS. As Defendant
19 suggests, Plaintiff has other avenues to obtain citizenship, although the
20 Court recognizes that a mail service problem and the delayed submission
21 of her application until only a few months prior to her eighteenth
22 birthday results in an unfortunate outcome in this case. However,
23 Plaintiff was aware of the importance of an expedited adjudication.
24 Plaintiff allowed the deadline to pass without calling (successfully),
25 writing or stopping by the USCIS office to check on the status of her
26 application.

1 It appears beyond doubt that the Plaintiff can prove no set of facts
2 in support of her claim which would entitle her to relief as case law²
3 confirms that Congress has mandated that the statutory requirements for
4 age and deadlines found in 8 U.S.C. §1433 are firm and not subject to
5 discretion. Section 1433 reads, in pertinent part:

6 A parent who is a citizen of the United States (or, if
7 the citizen parent has died during the preceding 5
8 years, a citizen grandparent or citizen legal guardian)
9 may apply for naturalization on behalf of a child born
10 outside of the United States who has not acquired
11 citizenship automatically under section 1431 of this
12 title. The Attorney General shall issue a certificate of
13 citizenship to such applicant upon proof, to the
14 satisfaction of the Attorney General, that the following
15 conditions have been fulfilled:

16 (1) At least one parent (or, at the time of his or her
17 death, was) is [FN1] a citizen of the United States,
18 whether by birth or naturalization.

19 (2) The United States citizen parent--

20 (A) has (or, at the time of his or her death, had) been
21 physically present in the United States or its outlying
22 possessions for a period or periods totaling not less
23 than five years, at least two of which were after
24 attaining the age of fourteen years; or

25 (B) has (or, at the time of his or her death, had) a
26 citizen parent who has been physically present in the
United States or its outlying possessions for a period
or periods totaling not less than five years, at least
two of which were after attaining the age of fourteen
years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States
in the legal and physical custody of the applicant (or,
if the citizen parent is deceased, an individual who
does not object to the application).

²*Hughes v. Ashcroft*, 255 F.3d 752, 760 (9th Cir.2001); *Langhorne v. Ashcroft*, 377 F.3d 175, 181 (2nd Cir.2004).

1 (5) The child is temporarily present in the United
2 States pursuant to a lawful admission, and is
3 maintaining such lawful status.

4 8 U.S.C. §1433 [Emphasis added.]

5 The Court reluctantly concludes that Plaintiff may not perfect her
6 claim to United States citizenship based upon the application for
7 Certificate of Citizenship filed on March 29, 2004. Accordingly,

8 **IT IS ORDERED** that:

9 1. Defendant United States' Motion for Summary Judgment, **Ct. Rec.**
10 **28**, filed February 12, 2008, is **GRANTED**. Plaintiff cannot perfect her
11 claim to United States citizenship based upon the application for
12 Certificate of Citizenship filed on March 29, 2004. Plaintiff's Motion
13 for Summary Judgment, **Ct. Rec. 24**, filed on February 12, 2008, is
14 respectfully **DENIED**.

15 2. The District Court Executive is directed to:

16 (a) FILE THIS ORDER;

17 (b) PROVIDE A COPY TO COUNSEL OF RECORD;

18 (c) ENTER JUDGMENT CONSISTENT WITH THIS ORDER; and

19 (c) **CLOSE THIS FILE**.

20 **DATED** this 1st day of April, 2008.

21 *s/Lonny R. Suko*

22 _____
23 LONNY R. SUKO
24 UNITED STATES DISTRICT JUDGE
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